

H.R. 3889

METHAMPHETAMINE EPIDEMIC ELIMINATION ACT

Section-by-Section Analysis

Title I – Domestic Regulation of Precursor Chemicals

Sec. 101. Regulated Transactions in Methamphetamine Precursor Chemical Products

This section repeals the federal “blister pack” exemption, reduces the federal per-transaction sales limit for pseudoephedrine, ephedrine, and phenylpropanolamine products from 9 grams to 3.6 grams (the amount recently proposed by the Administration), and clarifies the law to include derivatives of each of these chemicals.

When Congress first increased the regulation of meth precursor chemicals in the 1990’s, it created a special exemption for pseudoephedrine products contained in “blister packs” (the small plastic-and-foil packages that force a consumer to pop out cold pills one or two at a time). The theory was that these packages, being somewhat more difficult to open and empty *en masse* than bottles, would deter meth cooks from using them. It has not proven to be enough of a deterrent, however, and meth cooks have taken advantage of their ability under federal law to buy as many packages as they want.

This section would preserve the incentive to keep cold pills in blister packs, while subjecting them to the new sales limit. If pseudoephedrine, ephedrine, or phenylpropanolamine products are sold in pill form, they must be in blister packs to be sold over the counter; otherwise, they must be in liquid form. All forms of these products would now be subject to the 3.6 grams per transaction limit, without exception.

Subsections (b) and (c) make conforming amendments to the current law, to accommodate the new sales restrictions. Subsection (d) makes another technical correction to make it clear that these sales limitations apply to drug combinations containing derivatives of pseudoephedrine, ephedrine, or phenylpropanolamine.

Sec. 102. Authority To Establish Production Quotas

This section extends the Attorney General’s existing authority to set production quotas for certain controlled substances (see 21 USC 826) to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our supply is imported. If Congress adopts the import quotas enacted by Section 104 of the bill (see below), however, the Attorney General would need to have corresponding authority within the U.S. if domestic production were to increase. Current law (as amended) would allow manufacturers to apply for increases in their production quotas (see 21 USC 826(e)).

Sec. 103. Penalties; Authority for Manufacturing; Quota

This section would expand the existing penalty for illegal production beyond established quotas (see 21 USC 842(b)) to take into account the Attorney General's new authority to set quotas for meth precursors.

Sec. 104. Restrictions on Importation; Authority To Permit Imports for Medical, Scientific, or Other Legitimate Purposes

This section would extend the Attorney General's existing authority to set import quotas for controlled substances (see 21 USC 952) to pseudoephedrine, ephedrine, and phenylpropanolamine. This section contains provision allowing registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs, which would have to be acted on within 60 days.

Sec. 105. Notice of Importation or Exportation; Approval of Sale or Transfer by Importer or Exporter

This section would fix a hole in the current regulatory system for imports and exports of precursor chemicals for methamphetamine and other synthetic drugs. Under current law, an importer or exporter who wishes to import pseudoephedrine or other precursor chemicals must either (1) notify the Department of Justice 15 days in advance of the import or export, or (2) be a regular importer or exporter (i.e., a company that the Department has previously allowed to import or export), and planning to sell the chemicals to a regular customer (again, one that the Department has previously permitted to take delivery). (See 21 USC 971(a) and (b).)

A problem can arise, however, when the sale that the importer or exporter originally planned on falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the "spot market" – a wholesale market. Sellers are often under pressure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, the Department of Justice has no opportunity to review such transactions in advance and suspend them if there is a danger of diversion to illegal drug production.

This section would extend the current reporting requirements – as well as the current exemption for regular importers, exporters, and customers – to post-import or export transactions. If an importer or exporter was required to file an initial advance notice with the Department of Justice 15 days before the shipment of chemicals, and the originally planned sale fell through, the importer or exporter would then have to file a second advance notice with the Department identifying the new proposed purchaser. The Department would then have 15 days to review the new transaction and decide whether it presents enough of a risk of diversion to warrant suspension. As is the case under existing law, a suspension can be appealed through an administrative process. (See 21 USC 971(c)(2).)

If, however, an importer or exporter was exempted from filing an initial advance notice because it qualifies as a “regular” importer or exporter under existing law, that importer or exporter would not have to file the second advance notice, as long as the new proposed purchaser also qualifies as a “regular” customer under existing law. (Note that under current law, the Department does receive a record of these transactions after the fact, see 21 USC 971(b)(1).)

Sec. 106. Enforcement of Restrictions on Importation and of Requirement of Notice of Transfer

This section makes a conforming amendment to current law, to extend existing penalties for illegal imports or exports to the new regulatory requirements added by sections 104 and 105 of the bill.

Title II – International Regulation of Precursor Chemicals

Sec. 201. Information On Foreign Chain Of Distribution; Import Restrictions Regarding Failure Of Distributors To Cooperate.

This provision (originally introduced by Rep. Darlene Hooley) would further amend the reporting requirements for importers of meth precursor chemicals, by requiring them to file with federal regulators complete information about the chain of distribution of imported chemicals (from the manufacturer to the shores of the U.S.). This will help U.S. law enforcement agencies to better track where meth precursors come from, and how they get to the U.S. At present, very little information exists about the international “chain of distribution” for these chemicals, hindering effective controls.

Sec. 202. Requirements Relating To The Largest Exporting And Importing Countries Of Certain Precursor Chemicals.

This provision (originally introduced by Rep. Mark Kennedy) was adopted by the House as part of the State Department reauthorization legislation for FY 2006-07 (H.R. 2601). It would mandate a separate section of the current State Department report on major drug producing and transit countries (see 22 USC 2291h), identifying the 5 largest exporters of major methamphetamine precursor chemicals, and the 5 largest importers that also have the highest rate of meth production or diversion of these chemicals to the production of meth. If any of those countries were not fully cooperating with U.S. law enforcement in implementing their responsibilities under international drug control treaties, there would be consequences for their eligibility for U.S. aid, similar to those faced by the major drug trafficking nations under current law.

We have added a provision clarifying the original intent of this amendment, to apply the “fully cooperates” standard (and not the lesser standard under another, separate provision of law). The provision also includes authorization of \$1 million for implementation. The House recently passed an amendment to the State Department’s

appropriations bill for FY '06, adding \$5 million for the Department to implement anti-meth measures; this \$1 million could come out of that amount.

Sec. 203. Prevention Of Smuggling Of Methamphetamine Into The United States From Mexico.

This amendment would require the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide assistance to Mexico to prevent the production of methamphetamine in that country, and to encourage Mexico to stop the illegal diversion of meth precursor chemicals. The amendment would authorize the use of \$4 million of the \$5 million recently approved by the House for these purposes. (The remaining funds would be available to help the State Department implement Sec. 202, described above.)

Title III – Enhanced Criminal Penalties for Methamphetamine Production and Tracking

Sec. 301. Enhanced Penalties for Methamphetamine Production, Possession, or Trafficking

This section (originally proposed by Rep. Mark Kennedy, and reflecting changes suggested by the Judiciary Committee staff) amends the Controlled Substances Act and the Controlled Substances Import and Export Act, to increase the penalties for producing, trafficking, or smuggling methamphetamine.

Subsection (a) would impose higher penalties on the production or trafficking of meth or its precursor chemicals, by amending 21 USC 841 both to lower the threshold amounts for certain penalties already set by law, and actually to increase the mandatory minimum punishment for certain crimes.

Under current law, the penalties for meth production or trafficking are based on the amount involved, the number of prior convictions for drug trafficking, and whether death or serious injury resulted from the drugs involved. (See 21 USC 841(b).) The highest penalty (mandatory minimum of 10 years for a first offense, 20 years for a second offense, and life imprisonment if a third offense) is currently imposed if the amount of meth involved is 50 grams or more, or 500 grams or more of a substance containing a detectable amount of meth. This bill would lower those threshold amounts to 5 grams and 50 grams, respectively.

Similarly, the next highest penalty (mandatory minimum of 5 years for a first offense, 10 years if a second offense) is currently imposed for 5 grams or more of meth, or 50 grams or more of a detectable amount of meth. This bill would lower those thresholds to 3 and 30 grams, respectively.

Subsection (b) would make identical changes to the law governing illegal imports and exports of meth.

Sec. 302. Smuggling Methamphetamine or Methamphetamine Precursor Chemicals into the United States While Using Facilitated Entry Programs.

Even as more meth is being smuggled across the border, increased legitimate international traffic has forced the bureau of Customs and Border Protection (CBP) to rely on facilitated entry programs – so-called “fastpass” systems like SENTRI (for passenger traffic on the Southwest border), FAST (for commercial truck traffic), and NEXUS (for passenger traffic on the Northern border). These systems allow pre-screened individuals to use dedicated lanes at border crossings, subject only to occasional searches to test compliance with customs and immigration laws.

These programs can be a powerful tool for CBP to manage heavy traffic at major border crossings, but they can also create potential risks. If a drug trafficking organization were to hire someone cleared for a “fastpass” system, it could smuggle large amounts of drugs through only minimal security. The problem is compounded by the fact that computerized criminal background checks cannot be performed in Mexico, meaning that our ability to screen Mexican citizens who apply for a fastpass system is minimal at best.

This section (originally proposed by Rep. Mark Kennedy) would create an added deterrent for anyone to misuse a facilitated entry program to smuggle methamphetamine or its precursor chemicals. An additional penalty of up to 15 year’s imprisonment would be added to the punishment for the base offense. If convicted, an individual would also be permanently barred from using a fastpass system again.

Sec. 303. Manufacturing Controlled Substances on Federal Property.

This provision (originally proposed by Rep. Mark Kennedy) would clarify that current penalties for cultivating illegal drugs on federal property also apply to manufacturing synthetic drugs (such as meth). Meth cooks have frequently moved their operations to parks, national forests, and other public lands, causing serious environmental damage. This criminal penalty can help deter such destructive conduct.

Sec. 304. Increased Punishment for Methamphetamine Kingpins.

This provision (recommended by the staff of the Judiciary Committee) would allow for easier application to major meth traffickers of the enhanced penalties of the “continuing criminal enterprise” section of the Controlled Substances Act (21 U.S.C. 848). That section (commonly referred to as the “kingpin” statute) imposes life imprisonment on a leader of a drug trafficking organization convicted of trafficking in very large quantities of a drug, and receiving very large profits from that activity. This new provision would reduce the threshold amount of meth (from 300 to 100 times the threshold for base violations) and profits from meth (from \$10 million to \$1 million),

while still applying the life imprisonment penalty only to true “kingpins” – the ringleaders of meth trafficking organizations.

Title IV—Enhanced Environmental Regulation of Methamphetamine By-Products

Sec. 401. Designation of By-Products of Methamphetamine Laboratories as Hazardous Materials and Waste Under Hazardous Materials Transportation Act and Solid Waste Disposal Act.

This provision (originally contained in the CLEAN-UP Meth Act introduced by former Rep. Doug Ose, and currently sponsored by Rep. Mark Kennedy) would give additional authority to the Transportation Department and the Environmental Protection Agency (EPA) to enforce environmental regulations against meth cooks who cause pollution with meth by-products. The provision has been amended to require consultation by the Secretary of Transportation and the Administrator of the EPA with the Attorney General.

Sec. 402. Cleanup Costs

This provision (originally proposed by Rep. John Peterson) would clarify existing law imposing the obligation of restitution for environmental cleanup costs on persons involved in meth production and trafficking. The recent decision of the Eighth Circuit Court of Appeals in *United States v. Lachowski* (405 F.3d 696) (8th Cir. 2005) has undermined the ability of the federal government to seek cleanup costs from meth traffickers who are convicted only of meth possession – even when the meth lab in question was on the defendant’s own property. This provision would ensure that any person convicted of a meth-related offense can be held liable for clean-up costs for meth production that took place on the defendant’s own property, or in his or her place of business or residence.